

**EXECUTIVE DIRECTOR'S MONTHLY REPORT  
TO THE  
COLORADO RIVER BOARD OF CALIFORNIA**

**January 14, 2003**

**ADMINISTRATION**

**Board Meeting Schedule for Calendar Year 2003**

Included in the Board folder, for your information, is a copy of the Board's meeting schedule for calendar year 2003. This calendar reflects the changes the Board made, at its December meeting, by moving the August 13<sup>th</sup> meeting from Ontario, California, to San Diego on August 20<sup>th</sup>, and the November 12<sup>th</sup> meeting from Ontario, California, to Long Beach, California.

**AGENCY MANAGERS MEETING**

The Agency Managers have not met since the December Board meeting.

**PROTECTION OF EXISTING RIGHTS**

**Colorado River Water Report**

As of January 6, 2003, storage in the major Upper Basin reservoirs decreased by 375,000 acre-feet and storage in the Lower Basin reservoirs increased by 19,000 acre-feet during December. Total System active storage as of January 6<sup>th</sup> was 36.740 million acre-feet (maf) or 62 percent of capacity, which is 8.222 maf less than one year ago.

December releases from Hoover, Davis, and Parker Dams averaged 11,890, 8,850 and 5,240 cubic feet per second (cfs), respectively. Planned releases from those three dams for the month of January 2003 are 10,900, 10,300, and 5,400 cfs, respectively. The January releases represent those needed to meet downstream water requirements including those caused by reduced operation of Senator Wash reservoir.

The Lower Division States' estimated consumptive use of Colorado River water for calendar year 2002, as estimated by Board staff, totals 8.675 maf and is projected as follows: Arizona, 3.056 maf; California, 5.311 maf; and Nevada, 0.308 maf. Unmeasured return flow credits of 0.263 maf would reduce the total amount of projected consumptive use to 8.412 maf. All three Lower Basin states have increased their consumptive use of mainstream water due to a drought condition.

For calendar year 2002, it is estimated the Central Arizona Project (CAP) has diverted 1.621 maf, of which 0.340 maf is to be credited to the Arizona Water Bank, and The Metropolitan Water District of Southern California (MWD) will divert 1.209 maf.

The preliminary January 2003 end-of-year estimate for California agricultural consumptive

use of Colorado River water under the first three priorities and the sixth priority of the 1931 *California Seven Party Agreement* is 4.043 maf. This estimate is based on the collective use through November 2002 by the Palo Verde Irrigation District, the Yuma Project Reservation Division (YPRD), the Imperial Irrigation District, and the Coachella Valley Water District. Figure 1, found at the end of this report, depicts the historic projected end-of-year agricultural use for the year.

### Colorado River Operations

#### *Colorado River Water Users Association Conference in Las Vegas, Nevada*

Included in the Board folder is a copy of Secretary of the Interior Gale Norton's remarks that she presented at the Colorado River Water Users Association Conference. In her remarks, she focused on five issues.

- California

Secretary Norton said California can have a "soft-landing" by taking specific actions to reduce its Colorado River water to 4.4 million AF per year by the year 2015; in return, California would receive access to additional surplus water. "Alternatively, if California didn't take required actions, it would immediately lose enhanced access to surplus water, beginning January 2003. The latter approach would be the "hard landing".

- Mexico

Secretary Norton said that the United States shares both the Rio Grande and Colorado River with Mexico. Mexico has requested more water from the Colorado River, while disputes have risen over Mexico's delivery obligation of Rio Grande water to Texas. She explained that the U.S. is committed to upholding its treaty obligations, and the U.S. expects the Republic of Mexico to do the same.

- Federal Endangered Species

Secretary Norton stated "we also take very seriously the requirement of the federal Endangered Species Act in the course of managing the Colorado River". She cited the work accomplished in the Upper Colorado River Basin to recover endangered fish, and recognized the progress being made with the Multi-Species Conservation Program for the Lower Colorado River Basin.

- Indian Water Settlements

Secretary Norton said "one of the highest priorities of the Department of the Interior is responsibility to Indian Tribes". She noted construction on the long awaited Animas-La Plata project has commenced, along with settlement of Indian water rights in Arizona.

- Era of Limits

Secretary Norton stated that "the challenges ahead involve the era of limits with drought, population growth, and the loss of surpluses and full reservoirs. There are opportunities to use water more efficiently, both in cities and in agriculture. Urban water users can afford to help finance efficiency improvements that agriculture could not afford on its own. We need to encourage these efforts while protecting the viability of agricultural communities and maintaining in stream values

such as recreation, fisheries, and wildlife habitat”.

### *2003 Annual Operating Plan*

Included in the Board folder is a copy of the 2003 Annual Operating Plan (2003 AOP). On December 16, 2002, Secretary of the Interior Gale Norton transmitted the 2003 AOP to the Governors of the seven Colorado River Basin States. The 2003 AOP provides for:

- Upper Basin Delivery: The minimum objective release criterion will control the annual release from Glen Canyon Dam during water year 2003 in accordance with Article II(2) of the Operating Criteria unless spill avoidance and/or the storage equalization criteria in Article II(3) is controlling.
- Lower Basin Delivery: For operation of Hoover Dam, the Full Domestic Surplus condition is the criterion governing the operation of Lake Mead for calendar year 2003 in accordance with Article III(3)(b) of the Operating Criteria, Article II(B)(2) of the Decree and Sections 2(B)(2) and 7 of the Interim Surplus Guidelines, provided that the QSA is executed consistent with Section 5(B) of the Interim Surplus Guidelines. If the QSA is not executed by December 31, 2002, consistent with Section 5(B) of the Interim Surplus Guidelines “the interim surplus determinations under Sections 2(B)(1) and 2(B)(2) of these guidelines will be suspended and will instead be based upon the 70R Strategy, for either the remainder of the period identified in Section 4(A) or until such time as California completes all required actions and complies with the reductions in water use reflected in Section 5(C) of these Guidelines, whichever occurs first.” Such a determination would result in the Normal condition governing the operation of Lake Mead for calendar year 2003 in accordance with Article III(3)(a) of the Operating Criteria, Article II(B)(1) of the Decree and Sections 2(B)(3), 5(B) and 7, of the Interim Surplus Guidelines.
- Water Apportioned but Unused: Any Lower Division State may be allowed to utilize water apportioned to, but unused by, another Lower Division State in accordance with Article II(B)(6) of the Decree and Article XI, Section 1(B) of the Interim Surplus Guidelines.
- 1944 U.S.-Mexico Water Treaty Delivery: A volume of 1.5 maf of water will be allowed to be scheduled for delivery to Mexico during calendar year 2003 in accordance with Article 15 of the 1944 U.S.-Mexico Water Treaty and Minute No. 242 of the International Boundary and Water Commission.

### *Approval of Water Users Delivery Schedules for 2003*

On December 27, 2002, the Department of the Interior sent 17 letters to Colorado River

water contractors in Arizona, California, and Nevada informing them how much water will be available to each of them in 2003.

All water orders were approved except for Nevada, Imperial Irrigation District (IID), and The Metropolitan Water District of Southern California. The amount of water available to these entities hinges on the execution of the QSA.

If the QSA is signed: Nevada will be able to consumptively use its full basic entitlement of 300,000 AF and an additional 30,000 AF of surplus water; California would be able to consumptively use its full basic entitlement of 4,400,000 AF and an additional 700,000 AF of surplus water. In the absence of a signed QSA, IID and MWD's water orders would be reduced by 204,000 AF and 415,100 AF, respectively.

#### *Yuma Desalting Plant Operations*

Included in the Board folder is a copy of an outline prepared by representatives of Arizona Colorado River water using agencies, "Implementation of a 'Permanent Definitive' Solution Pursuant to P.L. 93-320 and Minute 242 of the Mexican Water Treaty". This outline was utilized during a discussion with representatives from the Lower Division States at a brief meeting on December 15, 2002, at the Colorado River Water Users Association conference. The purpose of the meeting was to discuss issues related to the status of the Yuma Desalting Plant (YDP) and Reclamation's continued preparation of the Report to Congress. The Lower Division States are continuing to discuss the issues.

Additionally, Reclamation hosted a conference call with Basin States' representatives regarding the latest iteration of the Report to Congress. Arizona's representatives continue to strongly object to Reclamation's desire to effect changes to Title I of the Colorado River Basin Salinity Control Act through the Report to Congress process. Arizona maintains that Reclamation must immediately ready YDP for operation and request appropriations to operate the plant. Reclamation believes that a dual-track is appropriate, with one track dedicated to evaluating the feasibility of procuring the replacement water from other sources and not operating the YDP. The other track would pursue readying the plant for operation and seeking necessary appropriations from Congress annually.

Reclamation has committed to revising language in the draft Report to Congress and holding additional meetings with the Basin States and other interested stakeholders.

#### *Consumptive Use of Mainstream Colorado River Water*

Included in the Board folder is a draft copy of the latest iteration of the proposed policy prepared by the California Agencies' Technical Committee entitled *Proposed Policy for the Determination of a Diminution of Supply from the Colorado River As Opposed to a Diversion From and Consumptive Use of Mainstream Colorado River Water*.

As was described last month, the proposed policy puts forward the position that actions taken by the Secretary of the Interior, pursuant to existing authorities to control floods, improve

navigation, and regulate the flow of the Colorado River, including the implementation of appropriate conservation measures, shall be considered as operation and control of the Colorado River in compliance with Article II(A)(1) of the Decree (in *Arizona v. California*). Such actions are distinct from a release of mainstream water controlled by the United States under Article II(A)(2) of the Decree for irrigation and domestic uses and the satisfaction of present perfected rights. Accordingly, any reservoir evaporation, channel, and other losses from the mainstream sustained as a result of:

1. The operation and control of the Colorado River;
2. Conservation measures implemented by Reclamation, pursuant to final biological opinions and reasonable and prudent alternatives; and
3. Future conservation measures implemented pursuant to an approved final LCR MSCP; are not chargeable to the states as a diversion or a consumptive use, but are to be treated as a diminution of supply from the mainstream.

Reclamation held a meeting in Las Vegas, Nevada, on December 19, 2002, to discuss the California proposal and related issues with representatives of the Lower Division States. Generally, the representatives from Nevada viewed the California proposal as favorable. Representatives of Arizona voiced concerns associated with the legality of the proposal in light of the Supreme Court Decree in *Arizona v. California*. Arizona also expressed concern about the precedent-setting nature of the proposal. Reclamation reserved comment until staff in the Regional Office had an opportunity to review the proposal completely. Another meeting was scheduled for January 7, 2003, also to be held in Las Vegas, Nevada.

The January 7, 2003, meeting again focused on the California proposal. Nevada again stated that the proposal was a step in the right direction and could be fashioned into a consistent administrative policy that could be equitably applied along the Lower Colorado River. Arizona restated their initial concerns, which fall into three primary categories:

- Issues related to the Supreme Court Decree in *Arizona v. California*. Specifically, Arizona is concerned that the proposal violates the intent of Article II(D);
- Proposed releases of system water for approved environmental purposes creates a new discretionary authority for the Secretary of the Interior; and
- Quantification of water uses for environmental purposes will be difficult, if not impossible, to account for in the annual Article V Decree accounting report.

Arizona believes that Reclamation and the Lower Division States must move very cautiously in developing and implementing any proposed administrative policy related to environmental uses associated with mainstream water.

Related to Arizona's first concern, it should be pointed out that the California proposal establishes the proposed policy based upon the purpose(s) behind the proposed mainstream water uses for environmental purposes. Consequently, if the environmental restoration and maintenance water use is associated with a valid entitlement holder's contract water use (e.g., for agricultural, domestic, or industrial uses), the environmental water uses would require a Section 5 contract as

well. If however, as the proposed policy articulates, the environmental water use is associated with the Secretary's operations and management of the Colorado River related to delivery of water to entitlement holders in the United States or the Mexican Treaty obligation, the water uses associated with habitat restoration and maintenance would be categorized as system loss.

With regard to Arizona's second concern, the proposed policy does not alter, in any fashion, the Secretary's discretionary or non-discretionary authorities, obligations, or responsibilities. The proposed policy relies on existing authorities embedded within the 1928 Boulder Canyon Project Act, the Colorado River Front Work and Levee System Act and amendments, the Supreme Court Decree in *Arizona v. California*, and the 1970 Long-Range Operating Criteria.

Arizona's third concern regarding quantification and Article V Decree accounting is addressed through an analysis of the purpose behind the habitat restoration and maintenance projects and water uses. If the water uses are the result of the Secretary's water management responsibilities, they are not accounted for in the annual Article V Decree accounting report. If the water uses are associated with a valid entitlement holders diversion, use, and return flow of mainstream water, the Decree requires that the use be reported and accounted for annually in the Article V report.

Reclamation is still evaluating the California proposal, but stated that they did have concerns related to the effect the proposed policy has on the definition of Reclamation's "discretionary authority." Additionally, Reclamation staff are not yet sure what effect the proposed policy will have on Article V Decree accounting requirements (i.e., diversions less returns equals consumptive use).

Finally, Arizona has committed to provide a written description of their concerns. Reclamation committed to finalizing their internal review of the proposal prior to the next meeting. A meeting has been scheduled for February 4, 2003, to be held in Las Vegas, Nevada.

### California's Colorado River Water Use Plan

#### *Quantification Settlement Agreement (QSA) and Related Documents*

As you are aware, discussions related to execution of the QSA by midnight on December 31, 2002 were not successful. The parties to the QSA are still continuing the discussions in the hope that final agreement can be reached at some juncture in the near future.

On January 6, 2003, State Senators Machado and Kuehl held a press conference to announce they would be introducing legislation to limit the Imperial Irrigation District's ability to receive Colorado River water to 2.6 million acre-feet per year. The major components of the proposed bill would include:

- Prohibit IID from entering into any existing or new contracts that would allow them to receive more than 2.6 million acre-feet per year of Colorado River water.
- Make IID liable for mitigating any environmental impacts associated with its use of Colorado River water.
- The bill's operative language would sunset when IID agrees to the water transfer under

the QSA and when the Interim Surplus Guidelines have been reinstated by the Secretary of the Department of the Interior.

*California Congressional Letter to Secretary Norton*

On December 19<sup>th</sup>, 22 members of California's Congressional Delegation wrote a letter to Secretary Norton concerning the Department of the Interior's (DOI) leadership responsibilities under federal law regarding the Salton Sea and the impact it is having on the QSA. In it, the delegation noted that "The single greatest obstacle to successful implementation of the QSA is the uncertainty over the scope and cost of efforts to protect and restore the Salton Sea". The letter noted that the California State Legislature had allocated nearly \$300 million in state funds to QSA related water conveyance and environmental costs, and amendments to stringent environmental laws to allow the proposed water transfer to proceed. The letter concluded that "this continued uncertainty is the direct result of DOI's failure to carry out the provisions of the Salton Sea Reclamation Act of 1998".

*Salton Sea Coalition Letter to Secretaries Norton & Nichols*

On December 16, 2002, the Salton Sea Coalition sent a letter to Secretary of the Interior Gale Norton, and California Secretary of Resources Mary Nichols. The letter requested that environmental and conservation organizations be permitted to participate in the negotiation process related to the QSA and the Salton Sea. Additionally, the Coalition requested that they be allowed to participate in the analysis of alternatives related to Salton Sea restoration. I have included a copy of the Coalition's letter in your handout materials.

*State Water Resources Control Board's Petition Order 2002-0013*

The California State Water Resources Control Board (State Board) held a final hearing in Sacramento on December 20, 2002. The State Board received oral and written testimony and comments related to the proposed order regarding the IID-SDCWA transfer. Upon consideration of the comments and other relevant information, the State Board approved the Order contingent upon execution of the QSA as defined in Senate Bill 482. Without execution of the QSA, the State Board's Order is held in abeyance.

*Imperial Irrigation District vs. United States of America; Gale Norton, et al.*

On January 10, 2003, IID filed suit in the United States District Court for the Southern District of California. In the lawsuit, IID alleges that the United States cannot unilaterally reduce the 2003 water delivery to the District, and then make some of the water available to Coachella Valley Water District and The Metropolitan Water District of Southern California. The complaint alleges that the government used "strong-arm" tactics to attempt to force IID to execute the QSA, and that the government is incorrectly interpreting and utilizing the 43 C.F.R. Part 417 regulations regarding reasonable and beneficial use. Also, the complaint alleges that the government is incorrectly interpreting the 1979 supplemental Decree in *Arizona v. California* which quantified the present perfected right holders in the Lower Colorado River Basin. I have included a copy of the complaint in the Board handout materials, along with IID's letter to Secretary Norton, newspaper articles and an agency press release.

## Basin States/Tribes Discussions

### *Colorado River Basin States' Meeting*

A meeting of the Colorado River Basin States was held on December 16, 2002. Issues discussed were: (1) Status of the QSA and related documents; (2) 2001 and 2002 Overrun and Payback; (3) New Mexico's proposed resolution related to the Navajo-Gallup Project (see below); (4) Mohave Generation Station Slurry Pipeline; (5) Update on the San Diego-Tijuana Pipeline; (6) Five-Year Review of the Long-Range Operating Criteria; (7) Binational Committee for Information and Advice related to the Colorado River Delta, Mexico; (8) IBWC's creation of a Colorado River Citizen's Forum; (9) Binational issues related to the Rio Grande/Colorado River; (10) Reclamation's Report to Congress regarding Title I of the Colorado River Basin Salinity Control Act; and (11) Reclamation's Yuma-area water management activities.

### *Colorado River Delta-Mapping Conservation Priorities Workshop*

Included in the handout material is the first work product emanating from the workshop I attended on October 15-17, 2002, entitled "Mapping Conservation Priorities in the Colorado River Delta: A State-of-the Knowledge Workshop" in Tijuana, Mexico. The objectives of the workshop were to:

- Assess specific sites within each major delta ecosystem type for their biological importance, risk of loss, and restoration or conservation potential.
- Assess the quantity, quality, and timing of water flows required to support each habitat type.
- Conduct a gap analysis of additional research required for developing a comprehensive restoration plan.

It is my understanding that a coalition of environmental and conservation organizations involved in the project will schedule a meeting with representatives of the United States and the Seven Basin States to brief the issues and discuss the next steps associated with conservation priorities for the Colorado River Delta in Mexico.

## Colorado River Environmental Activities

### *Lower Colorado River Multi-Species Conservation Program*

As was discussed at last month's Board meeting, the Lower Colorado River Multi-Species Conservation Program (LCR MSCP) Coordinating Team (CT) is meeting frequently in an effort to develop consensus positions related to the preparation of the draft LCR MSCP Conservation Plan,



Implementation Agreements, long-term funding agreements, and assurances related to long-term environmental compliance.

Prior to each of the CT meetings, the California MSCP Caucus meets and reviews the proposed agenda for the CT meetings and develops California positions for each of the agenda items. At the January 2-3 meetings of the CT, the participants developed points of tentative agreement (PTAs) related to the following topics:

- The term of the LCR MSCP will be for fifty (50) years;
- The LCR MSCP Biological Opinion (federal document) will include a “conference opinion” for unlisted species and will cover all federal actions, including the issuance of the non-federal Section 10 incidental take permit;
- The LCR MSCP will address ESA Section 7 and 10 actions, including:
  - Federal covered projects list will be expanded to include non-discretionary federal activities, to ensure that effects are identified, evaluated, and mitigated;
  - State covered projects lists should be expanded to include non-discretionary federal activities, to ensure that all effects are identified, evaluated, and mitigated.
- The obligation to provide mitigation for tribal projects, included as MSCP covered projects, is not the responsibility of the States; and that approximately 100 acres of impact associated with Tribal projects is within California; and that the BIA and Tribes seeking incidental take authorization in the three states;
- The definitions and concepts associated with “environmental baseline,” “effects of the action,” and “potential habitat,” as memorialized in the USFWS letter of June 5, 2002 are adopted and agreed to;
- The effects of increased upper basin depletions are included in the environmental baseline, and are not included in the LCR MSCP as a covered project, nor is there any intent for the LCR MSCP to provide any mitigation for any associated impacts related to Upper Basin depletions; and
- After reasonable investigation, the participants are not aware of any inter-related or inter-dependent actions other than the non-federal covered actions.

Additionally, the meeting participants reviewed the LCR MSCP covered species lists with representatives of the USFWS. After significant discussion, the federal covered species list was reduced from a total of 49 species to 31 species. A similar discussion remains to be held with CDFG regarding species proposed for coverage under California Fish and Game Code.

The CT is scheduled to meet on January 16-17, and again on January 30-31, 2003, in Ontario, California. The Colorado River Board will continue to schedule California MSCP Caucus meetings prior to the scheduled CT meeting to ensure that there is a thorough exchange of information and ideas related to the CT process.

Finally, I can report that the USFWS recently announced that the flat-tailed horned lizard will not be listed as a federal endangered species. The USFWS has determined that the species and its habitat are not threatened, and that any potential threats to the species are not likely endanger the

species in the foreseeable future. Also, current conservation measures being implemented by state and federal agencies have contributed toward efforts to conserve and protect the flat-tailed horned lizard and the habitats it depends upon. It is currently the intent of the LCR MSCP to maintain the flat-tailed horned lizard as a covered species in the Conservation Plan over the 50-year term of the Program.

#### *Glen Canyon Adaptive Management Work Group Activities*

The Glen Canyon Dam (GCD) Adaptive Management Work Group is scheduled to meet in Phoenix, Arizona, on January 28-29, 2003. The agenda for the meeting includes the following items:

- Review the status of the proposed experimental flow releases from Glen Canyon Dam;
- Discuss the status of non-native fish control efforts in the Grand Canyon reaches of the mainstream;
- Review the status of the proposed temperature control device for Glen Canyon Dam;
- Continue to review overall Adaptive Management Program (AMP) information needs;
- Review and discuss the proposed Fiscal Year 2004 budget for the GCD AMP;
- Status of Reclamation's Public Outreach strategy related to the Adaptive Management Program;
- Reclamation will provide an overview of basin-wide hydrology and projected snow-pack forecasts; and
- Issues related to reorganization of the Grand Canyon Monitoring and Research Center within the U.S. Geological Survey.

Both, Mr. Harris and I will be attending the two-day meeting of the Glen Canyon Dam Adaptive Management Work Group.

## **WATER QUALITY**

#### *Colorado River Basin Salinity Control Forum*

Included in the Board handout material is a copy of the 2002 Review, Water Quality Standards for Salinity, Colorado River System (2002 Review), dated October 2002. In the past, the Forum would publish a Supplement, to the triennial review, to capture the Forum's response to comments received on the document. This 2002 Review was revised, in its entirety, to reflect the comments received at the five public meetings held across the Upper and Lower Basin. The most significant change was to Appendix B dealing with the NPDES Permit Program which we have discussed at previous meetings. A new Appendix D was added to capture the various oral and written comments. Each comment is followed by the Forum's response.

Since the issuance of the 1999 Review, installed salinity control measures have increased from 721,000 tons/year to 800,000 tons/year. Salinity control measures leading to the annual removal of an additional 1,000,000 tons of salt must be implemented by 2020 to meet the Program's goal of approximately 1.8 million tons of salt-load reduction annually.

The 2002 Review recommends no change in the numeric criteria and proposes a Plan of Implementation for controlling salinity. The Forum has formally transmitted the 2002 Review to each state's water quality agency who in turn will submit it to the Environmental Protection Agency for its approval as part of that state's water quality standards.

/s/

Gerald R. Zimmerman  
Executive Director